

To: Lamoine Board of Appeals

From: Lamoine Planning Board

Re: Response to April 29, 2014 Memorandum of Edmond J. Bearor, Esq. to Lamoine Zoning Board of Appeals on behalf of Doug Gott & Sons, Inc.

Date: May 5, 2014

On March 4, 2014, the Lamoine Planning Board denied a Site Plan Review permit to Doug Gott & Sons, Inc. (hereinafter Gott) for construction of a commercial building, access road and adjacent parking area, noting that the project's proposal to excavate some 70,000 cubic yards of sand and gravel, associated topsoil and vegetation was not in compliance with the General Review Standard J.1. which requires, among other things, "minimizing... disturbance of soil, and retaining existing vegetation during construction.'

Mr. Bearor contends that the Planning Board erred in its interpretation of Section J.1. of the General Review Standards of the Site Plan Review Ordinance of the town, and cites the following reasons:

*1. The site is devoid of trees so minimizing tree removal was not an issue.*

Response: The site as proposed on the submitted Site Plan is indeed largely devoid of trees. Trees once on the site were clear-cut soon after the Planning Board's January 5, 2011, denial of a Site Plan Review permit to Gott for gravel extraction on the parcel in question. Said denial was upheld by the Hancock County Superior Court (Cuddy, J.) on December 5, 2012. Gott proposes to remove a small stand of trees remaining on the site as well as trees on the abutting property under his control which serve as screening within a 10' buffer zone required by the gravel permit for that abutting parcel. While minimizing tree removal as noted in Section J.1. is of concern to the Planning Board, it was not cited in the Planning Board's record for denying this particular Site Plan Review permit and thus it can hardly be used as a reason for appeal.

*2. The disturbance of soil should be expected with any project.*

Response: The Planning Board, of course, is fully aware of that fact and its objection does not refer to soil disturbance per se but, rather, the enormous scope of disturbance proposed. The permit denial stands firmly on the finding that the proposed removal of 70,000 cubic yards of material to prepare the site for the building and parking area cannot be judged as necessary for the proposed use and its scope constitutes the very opposite of minimum soil disturbance as required by the review standard. Members of the Board noted in discussion that excavations from which more than 500 cubic yards of sand, gravel, crushed stone, soil and loam are to be removed require a Gravel Permit from the town, a

permit which the applicant did not have (see discussion below). Further, the proposed access from Gott's abutting property, on which the permitted B&H gravel pit is located, would require additional excavation to develop an access road at the proposed elevation and also would remove a portion of the natural buffer that is required as a condition of the existing gravel permit, which natural buffer the Applicant is obliged to maintain.

*3. The Applicant has determined that for business purposes it should have a facility such as the one it proposes in Lamoine.*

Response: Assessing the appropriateness of Gott's business decisions lies beyond the purview of the Planning Board. Assessing the impact of those decisions on the land and residents of the town, however, lies at the heart of the Board's mandated responsibility to administer the Site Plan Review Ordinance. That Gott desires a facility such as the one it proposes was not cited as a reason for denying the application and thus cannot be cited as a basis for appeal. Indeed, it must be noted that the Planning Board granted a Commercial Building permit for the proposed facility and parking area.

*4. The Applicant further believes that for ease of operations the facility should be at roughly the same elevation as the adjoining parcel from which it will be accessed. Furthermore, the access proposed by the Applicant is at a point that is as far as possible from any residences, thus lessening any impact the development might have on abutters.*

Response: The distance of the proposed access road from any residences was not cited as a reason for denial of the Site Plan Review permit. Similarly, that the Applicant desires the facility should be built at the same elevation as a building located some 600 feet away on an abutting parcel under its control was not cited as a reason for denying the permit. Therefore, neither can be cited as a basis for appeal. What is cited as the reason for denial is that to establish the same elevations for both buildings involves the extraction of about 70,000 cubic yards of material from the site, a requirement that triggers the need for a Gravel Permit (see discussion below).

*5. It is not the Planning Board's role to redesign or reconfigure an Applicant's proposal such as the Planning Board has attempted to do here by suggesting that access to the parcel be from a location other than the existing extraction operation which is controlled by the applicant and which already exists, even if it might reduce the amount of soil that is disturbed.*

Response: If, in the course of a review of an application and discussion with an applicant regarding the specifics of a proposal, the Planning Board notes that some aspect of the proposal might not meet a requirement of the applicable ordinance, it is perfectly

appropriate for the Board to suggest what might be done ('redesign or reconfigure', to use the appellants term) to satisfy such requirement. In response to any suggestion by the Board, the applicant is under no obligation to make any changes in the proposal. He may or may not; that is the applicant's decision. (A review of the video record of March 4 will reveal that some suggestions offered by the Planning Board were, in fact, in response to Gott's agent S. Salsbury's direct question to the board about what could be changed to make the application acceptable to the Board.) To assert that the Planning Board has misinterpreted Section J.1. of the Site Plan Review Ordinance because it suggested possible changes that could be made in the application to satisfy the ordinance requirements is specious.

It is the Planning Board's position that none of the above reasons stated by the appellant are errors in interpretation of Section J.1. by the Board, as explained above in the responses to the appellant's assertions. Indeed, it seems to the Board that many of the appellant's stated reasons bear little or no relation to Section J.1. The appellant's appeal should be dismissed for these reasons alone.

Moreover, the Planning Board wishes further to comment on the appellant's statement on page 2 of the appeal, that "...it would appear the only issue is the amount of soil disturbed in construction of this project that caused the Planning Board to deny the Application." As was noted in the record, the extraction of 70,000 cubic yards of material from the parcel to prepare the site as proposed in the application is of such scope as to require the applicant to obtain a Gravel Permit from the Planning Board prior to any extraction.

The applicant has twice previously submitted applications to the Planning Board to extract gravel from the site.

- On January 5, 2011, the Planning Board denied Gott's application for a Site Plan Review permit for gravel extraction on this site, a denial which ultimately was appealed to Hancock County Superior Court which, in a judgment rendered December 5, 2012, sustained the Planning Board's denial of the Site Plan Review permit.
- In February, 2013, the applicant submitted a new Site Plan Review application for gravel extraction, but in August of that year withdrew the application prior to its being reviewed fully by the Board, after the Board had requested additional information be provided, information which the applicant chose not to provide.

In spite of Gott's efforts to obtain permits to extract gravel from the site, Mr. Bearor's memorandum asserts that the Applicant's primary intention or goal is not to extract material but is, rather, simply to construct a 40' x 80' building with a 20,000 square foot

parking and storage area adjacent to it. While the applicant's true intention is known only to the applicant and those in whom he confides, the written proposal itself involves not only the construction of the building, adjacent parking area and access road, but also the extraction of 70,000 cubic yards of material to prepare the site as desired. The Planning Board has granted a Commercial Building permit for the former and denied a Site Plan Review permit for the latter, after determining that the 70,000 cubic yard proposed excavation is unwarranted and unnecessary to achieve the Applicant's primary goal, and clearly does not meet Review Standard J.1

The Planning Board believes its findings of fact are substantive and compelling and, despite Mr. Bearor's recommendation to the Appeals Board to make a decision with no regard to the Planning Board's findings, must be accorded utmost regard.

+++++

Written on behalf of the Planning Board by:

John Holt, Chair

Gordon Donaldson, Secretary